

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

UNITED STATES OF AMERICA)
)
 v.) INFORMATION
)
 MATTHEW W. BITTENBENDER,) Criminal No.
)
 Defendant)

THE UNITED STATES OF AMERICA, THROUGH ITS ATTORNEYS, CHARGES:

INTRODUCTION

At all times relevant to this Information, unless otherwise indicated:

1. The Defense Energy Support Center (“DESC”), a department of the Defense Logistics Agency, within the United States Department of Defense (“DOD”), is responsible for soliciting competitive bids for into-plane and Posts, Camps & Stations (“PC&S”) fuel supply contracts to service United States military and civilian activities, evaluating those offers, and awarding resultant fuel supply contracts at numerous locations worldwide. Into-plane contracts require the contractor to deliver aviation fuel into authorized aircraft, including military and civilian DOD aircraft, at a particular commercial airport location. Generally, a single DESC into-plane solicitation will contain line items for numerous airport locations within a broad geographic area, but offerors are not required to submit an offer on all airport locations. Rather, each airport location may be awarded as a separate contract or, where a single offeror is awarded multiple airport locations from the same solicitation, those airport locations may be awarded in a single contract. PC&S contracts are awarded for delivery of fuel into authorized storage

facilities, including tanks, bladders, or tanker trucks at destinations worldwide.

2. DESC awarded into-plane and PC&S fuel supply contracts via a full and open multi-stage competitive procurement process in which competing offerors submitted "initial" bids by a given date, which were reviewed by officials at DESC. After receipt of the initial bids, competing offerors were permitted to submit revised "best and final" bids. Offerors were not, however, allowed to view competing offerors' initial bids in preparing their best and final bids. A competitor could not submit a "best and final" bid unless it had also submitted an initial bid.

3. In February 2005, DESC issued Solicitation SP0600-05-R-0046 for into-plane fuel supply, containing line items for 109 airports throughout Asia and Eastern Europe. After an amendment that changed the initial due date, Solicitation SP0600-05-R-0046 called for initial bids to be submitted on April 11, 2005. Best and final bids for some of the locations were due in or around the first week of August 2005. In addition, in or around May 2005, DESC re-opened Solicitation SP0600-05-R-0012 for the into-plane contract at Baku, Azerbaijan. Solicitation SP0600-05-R-0012 was subsequently awarded on or around May 10, 2005. Finally, in or around June 2005, DESC issued Solicitation SP0600-05-R-0205 for a PC&S fuel supply contract at Bagram Air Field, Afghanistan. The initial due date for SP0600-05-R-0205 was July 1, 2005. Amendments to Solicitation SP0600-05-R-0205 postponed the initial proposal due date until March 31, 2006, and best and final bids were due by July 13, 2006. The PC&S contract for Bagram Air Field, Afghanistan was awarded on August 16, 2006.

4. AVCARD was a division of Kropp Holdings, LLC, an S-corporation organized and existing under the laws of Maryland, with its principal place of business in Hunt Valley, MD. AVCARD was a provider of into-plane and PC&S fuel supply services to the DESC. As part of

its normal business operations, AVCARD developed and assembled bid packages that were submitted to DESC, in response to solicitations for into-plane and PC&S fuel supply services. In the process of assembling these bid packages, AVCARD created and maintained underlying data, including economic data, cost information, supplier information, profit and loss data, business forecasts and other confidential information that assisted it in deciding on which locations to bid and what price to bid at each location. AVCARD took reasonable measures to keep this information secret, and this information derived independent economic value, both actual and potential, because it was secret and not readily ascertainable by the public.

5. The defendant, Matthew W. BITTENBENDER (“BITTENBENDER”), resided in Baltimore, Maryland, in the District of Maryland. From at least or around 1999 until December 2005, BITTENBENDER was employed by AVCARD and, as an employee, owed AVCARD a fiduciary duty. From at least 2002 until December 2005, BITTENBENDER held the position of Contract Fuel Manager for AVCARD and was responsible for preparing AVCARD’s bids for certain government contracts, including DESC contracts for into-plane and PC&S fuel supply services. In particular, BITTENBENDER was responsible for helping prepare AVCARD’s bid package for DESC Solicitations SP0600-05-R-0046, SP0600-05-R-0012, and SP0600-05-R-0205. BITTENBENDER was terminated from AVCARD in or around December 2005.

6. BITTENBENDER conspired with two individuals (“CC-1” and “CC-2”) who owned and operated two companies (“Competitor 1” and “Competitor 2”) that AVCARD competed against for into-plane and PC&S fuel supply contracts at various locations. CC-1 and CC-2 are the Managing Co-Directors of Competitor 1, located in Prague, Czech Republic, and Houston, Texas. CC-1 and CC-2 are also corporate officers of Competitor 2, located on the Isle

of Man, a self-governing dependency of the United Kingdom.

7. Various companies and individuals, not made defendants in this Information, participated as co-conspirators in the offenses charged herein and performed acts and made statements in furtherance thereof. Whenever this Information refers to any act, deed or transaction of any company, it means that the company engaged in the act, deed or transaction by or through its officers, directors, employees, agents or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

COUNT 1: CONSPIRACY TO DEFRAUD THE UNITED STATES (18 U.S.C. § 371)

DESCRIPTION OF THE OFFENSE

8. The United States re-alleges paragraphs one through seven of this Information and incorporates by reference these paragraphs as if they were fully set forth herein.

9. Beginning in or about February 2005 and continuing until at least in or about July 2006, the exact dates being unknown to the United States, in the District of Maryland and elsewhere, the defendant, BITTENBENDER, and co-conspirators did knowingly and willfully combine, conspire, confederate, and agree with each other to defraud the United States or an agency thereof, to wit, DESC, by impeding, obstructing and impairing the honest administration of DESC's full and open competitive procurement process for into-plane and PC&S fuel supply contracts in violation of Title 18, United States Code, Section 371.

MANNER AND MEANS

10. The defendant, BITTENBENDER, and his co-conspirators would and did carry out the conspiracy and effect its unlawful objects and executed the unlawful scheme to defraud the United States through the following manner and means, among others:

A. It was part of the conspiracy that BITTENBENDER would misappropriate AVCARD's confidential bid information and the data underlying that bid information, including AVCARD'S "initial" and "best and final" bids for various DESC into-plane and PC&S fuel supply solicitations, including SP0600-05-R-0046, SP0600-05-R-0012, and SP0600-05-R-0205.

B. It was part of the conspiracy that BITTENBENDER would transmit AVCARD's confidential bid information and the data underlying that information to his co-conspirators via interstate and foreign email and telephone communications.

C. It was part of the conspiracy that BITTENBENDER's co-conspirators would use AVCARD's bid information to bid against AVCARD at those locations where they were directly competing with AVCARD, in such a way as to foreclose AVCARD from competing freely for these DESC contracts and as to prevent DESC from achieving its requirement of a competitive bidding process.

D. It was part of the conspiracy that BITTENBENDER's co-conspirators would pay BITTENBENDER a flat fee, plus a commission of 10% of the profits at every into-plane location where the co-conspirators' bid successfully won the DESC contract. BITTENBENDER was to be paid a percentage of the fuel sales for PC&S fuel supply contracts won by Competitor 1 or Competitor 2.

E. It was part of the conspiracy that BITTENBENDER and his co-conspirators would conceal and misrepresent the nature and extent of their relationship from any other person, including DESC and AVCARD.

OVERT ACTS

11. In furtherance of the conspiracy and to achieve the objects and purposes thereof, BITTENBENDER and his co-conspirators committed and caused to be committed the following overt acts, among others, in the District of Maryland and elsewhere:

A. On or about February 28, 2005, BITTENBENDER, while an employee of AVCARD, sent an email from within the District of Maryland to CC-1 in the Czech Republic, suggesting terms of a consulting agreement wherein BITTENBENDER would consult for Competitor 1 and Competitor 2 on DESC contracts that had been solicited in Solicitation SP0600-05-R-0046.

B. On or about March 8, 2005, after several days of negotiations, CC-2 sent back a "final draft" of the agreement, which called for BITTENBENDER to receive a flat fee, based on Competitor 1's and Competitor 2's bids, plus 10% of the profits at each location where Competitor 1 or Competitor 2 was the winning bidder. On March 8, BITTENBENDER accepted the final agreement, and on or about March 9-10, 2005, an agreement to this effect was executed by BITTENBENDER and CC-1 on behalf of Competitor 1 and Competitor 2.

C. In or about the middle of March 2005, BITTENBENDER and his co-conspirators agreed that BITTENBENDER would provide them with AVCARD's confidential bid information in order that Competitors 1 and 2 could use that information to bid non-competitively against AVCARD at those locations where they were directly competing with AVCARD.

D. On or about March 17, 2005, BITTENBENDER sent an invoice via email

from within the District of Maryland to CC-1 and CC-2 in the Czech Republic for \$9,000.00 covering the flat fee for Solicitation SP0600-05-R-0046, which included at least six into-plane locations where Competitor 1 or Competitor 2 was competing directly against AVCARD.

E. On or about March 21, 2005, CC-1 wired BITTENBENDER \$9,000.00 via interstate wire transfer from New York to the District of Maryland for BITTENBENDER's services on behalf of Competitors 1 and 2.

F. On or about April 7, 2005, four days before initial bids were due on DESC Solicitation SP0600-05-R-0046, BITTENBENDER sent another email to CC-1 with the subject heading "Known competition?" in which he divulged what AVCARD was bidding at several airport locations and described where his co-conspirators had an advantage over AVCARD based on price.

G. On or about April 8, 2005, after AVCARD submitted its bid for DESC Solicitation SP0600-05-R-0046, BITTENBENDER sent an email to CC-1 informing him that AVCARD had bid high at Tashkent, Uzbekistan and asking him if he would like to raise his own bid so as to maximize the profit margin.

H. On or about April 8, 2005, BITTENBENDER sent an updated invoice to CC-1 reflecting four additional into-plane locations where Competitor 1 or Competitor 2 bid directly against AVCARD. On or about May 4, 2005, CC-1 sent BITTENBENDER an international wire transfer for \$1,510.00.

I. On or about April 9, 2005, at approximately the time initial bids were due for DESC Solicitation SP0600-05-R-0046, BITTENBENDER conveyed to his co-

conspirators AVCARD's updated confidential bid information at locations where Competitor 1 or Competitor 2 planned to bid against AVCARD.

J. From in or about the end of February 2005 through when initial bids for DESC Solicitation SP0600-05-R-0046 were due on April 11, 2005, BITTENBENDER placed more than fifteen international calls from his office telephone in Hunt Valley, Maryland to CC-1 in the Czech Republic to discuss developments in the DESC bidding process.

K. On or about April 11, 2005, Competitor 1 and Competitor 2 submitted their bids for Solicitation SP0600-05-R-0046 via international facsimile from the Czech Republic to DESC in the Eastern District of Virginia.

L. On or about August 1, 2005, just in advance of the "best and final" bidding on Solicitation SP0600-05-R-0046, BITTENBENDER emailed a spreadsheet to CC-1 comparing AVCARD's price margins with those of Competitors 1 and 2. In the cover email, BITTENBENDER told CC-1 to look at the spreadsheet in anticipation of a planned telephone conversation the next day.

M. On or about August 4, 2005, at approximately the same time that "best and final" bids were due for Solicitation SP0600-05-R-0046, BITTENBENDER conveyed to his co-conspirators AVCARD's "best and final" bid information, thereby allowing them to underbid AVCARD at those airports where they were directly competing with AVCARD.

N. In or about early May, 2005, DESC re-opened bidding for an into-plane fuel supply contract, Solicitation SP0600-05-R-0012, at Baku, Azerbaijan. In

response to the bid re-opening, BITTENBENDER sent an email to CC-1 advising him that he could raise his profit margin from 4.1 cents per gallon to no higher than 7 cents per gallon and that even the increased bid would defeat AVCARD.

O. On or about May 10, 2005, BITTENBENDER sent an email of congratulations to CC-1 and CC-2 informing them that DESC sent a letter of regret to AVCARD stating that Competitor 1 was the awardee at Baku.

P. In or about June 2005, BITTENBENDER and CC-1 began to negotiate a consulting agreement to secure BITTENBENDER's assistance in assembling a bid in response to DESC PC&S Solicitation SP0600-05-R-0205 for Bagram Air Field, Afghanistan. By the end of June 2005, BITTENBENDER informed CC-1 that AVCARD was also planning to bid on Solicitation SP0600-05-R-0205.

Q. Prior to October 2005, BITTENBENDER informed his co-conspirators the price AVCARD was bidding and its expected profit margin at Bagram Air Field.

R. On or about October 10, 2005, BITTENBENDER sent an email to CC-1 informing him that AVCARD had changed its price for Bagram Air Field, but that AVCARD had not yet determined its final bid price. Two days later, BITTENBENDER wrote to CC-1, telling him that AVCARD had now increased its bid at Bagram Air Field by 18 cents per gallon.

All in violation of Title 18, United States Code, Section 371.

COUNT 2: CONSPIRACY TO COMMIT WIRE FRAUD (18 U.S.C. § 1349)

DESCRIPTION OF THE OFFENSE

12. The United States re-alleges paragraphs one through seven of this Information and

incorporates by reference these paragraphs as if they were fully set forth herein.

13. Beginning in or about February 2005 and continuing until at least in or about July 2006, the exact dates being unknown to the United States, in the District of Maryland and elsewhere, the defendant, BITTENBENDER, and co-conspirators did knowingly and willfully combine, conspire, confederate, and agree with each other to commit wire fraud, to wit, (1) to defraud BITTENBENDER's employer, AVCARD, of the intangible right to his honest services by materially false and fraudulent pretenses, representations and promises, in violation of Title 18, United States Code, Sections 1343, 1346; and (2) to defraud BITTENBENDER's employer, AVCARD, of its confidential business information by materially false and fraudulent pretenses, representations and promises, in violation of Title 18, United States Code, Section 1343, all in violation of Title 18, United States Code, Section 1349.

14. As an employee of AVCARD, BITTENBENDER owed AVCARD a fiduciary duty, and by misappropriating and transmitting AVCARD's confidential business information to AVCARD's competitors, BITTENBENDER breached that fiduciary duty, knowing and intending that such a breach would cause AVCARD significant financial loss.

15. During BITTENBENDER'S employment with AVCARD, he defrauded AVCARD of its confidential business information for his and his co-conspirators' pecuniary benefit, all the while falsely and fraudulently pretending that he was performing his duty of safeguarding AVCARD'S confidential business information.

16. For purposes of executing such scheme and artifice to defraud AVCARD, BITTENBENDER and his co-conspirators transmitted and caused to be transmitted writings, signs, signals, pictures, and sounds by wire communications in interstate and foreign commerce.

MANNER AND MEANS

17. The defendant and his co-conspirators would and did carry out the conspiracy and effect its unlawful objects and executed the scheme to defraud AVCARD through the following manner and means, among others:

- A. It was part of the conspiracy that BITTENBENDER would misappropriate AVCARD's confidential bid information and the data underlying that bid information, including AVCARD'S "initial" and "best and final" bids for various DESC into-plane and PC&S fuel supply solicitations, including SP0600-05-R-0046, SP0600-05-R-0012, and SP0600-05-R-0205.
- B. It was part of the conspiracy that BITTENBENDER would transmit AVCARD's confidential bid information and the data underlying that information to his co-conspirators via interstate and foreign email and telephone communications.
- C. It was part of the conspiracy that BITTENBENDER's co-conspirators would use AVCARD's bid information to bid against AVCARD at those locations where they were directly competing with AVCARD, in such a way as to foreclose AVCARD from competing freely for these DESC contracts and as to prevent DESC from achieving its requirement of a competitive bidding process.
- D. It was part of the conspiracy that BITTENBENDER would breach the fiduciary duty he owed to AVCARD as an employee, knowing and intending that such a breach could cause AVCARD significant financial loss.
- E. It was part of the conspiracy that BITTENBENDER's co-conspirators

would pay BITTENBENDER a flat fee, plus a commission of 10% of the profits at every into-plane location where their bid successfully won the DESC contract. BITTENBENDER was to be paid a percentage of the fuel sales for PC&S fuel supply contracts won by Competitor 1 or Competitor 2.

F. It was part of the conspiracy that BITTENBENDER and his co-conspirators would conceal and misrepresent the nature and extent of their relationship from any other person, including AVCARD and DESC.

OVERT ACTS

18. The United States re-alleges the allegations set forth in paragraph 11, subparagraphs A through R, of this Information and incorporates by reference these paragraphs and subparagraphs as if they were fully set forth herein.

All in violation of Title 18, United States Code, Section 1349.

COUNT 3: CONSPIRACY TO STEAL TRADE SECRETS (18 U.S.C. § 1832(a)(5))

DESCRIPTION OF THE OFFENSE

19. The United States re-alleges paragraphs one through seven of this Information and incorporates by reference these paragraphs as if they were fully set forth herein.

20. In the normal course of its business providing fuel supply services in interstate and foreign commerce, AVCARD kept all information related to its bids, including subcontractor information, costs, economic data, business plans, the prices it intended to bid, and its bid packages confidential and took reasonable measures to protect and keep secret this proprietary information until it decided when, if ever, to publicize such information. Some of the protective measures AVCARD employed to safeguard its business information included maintaining the

physical security of the AVCARD premises, limiting access to the confidential information only to those who needed it to perform their employment duties, implementing computer and data security policies, informing employees of their obligation to keep the information secret, and requiring employees, as a condition of employment, to adhere to a Corporate Ethics Statement, which expressly advised employees to safeguard AVCARD's confidential information.

21. AVCARD derived independent economic value, both actual and potential, from its confidential bid information and the data underlying that bid information not being generally known to, or readily ascertainable through proper means by, the public.

22. AVCARD's confidential bid information and the data underlying that bid information constitutes trade secrets as defined in 18 U.S.C. § 1839(3)(A)-(B).

23. Beginning in or about February 2005 and continuing until at least in or about July 2006, the exact dates being unknown to the United States, in the District of Maryland and elsewhere, the defendant and co-conspirators did knowingly and willfully combine, conspire, confederate, and agree with each other to convert for their own economic benefit AVCARD's trade secrets, namely, AVCARD's confidential bid information and data underlying that bid information, which were related to a product, namely fuel supply services, placed in interstate and foreign commerce, by knowingly stealing and without authorization appropriating, taking, carrying away and concealing those trade secrets knowing and intending their action would substantially injure AVCARD, in violation of Title 18, United States Code, Section 1832(a)(5).

MANNER AND MEANS

24. The defendant and his co-conspirators would and did carry out the conspiracy and its unlawful objects and executed the scheme to convert AVCARD'S trade secrets for their own

economic benefit through the following manner and means, among others:

- A. It was part of the conspiracy that BITTENBENDER would misappropriate AVCARD's confidential bid information and the data underlying that bid information, including AVCARD'S "initial" and "best and final" bids for various DESC into-plane and PC&S fuel supply solicitations, including SP0600-05-R-0046, SP0600-05-R-0012, and SP0600-05.
- B. It was part of the conspiracy that BITTENBENDER would transmit AVCARD's confidential bid information and the data underlying that information to his co-conspirators via interstate and foreign email and telephone communications.
- C. It was part of the conspiracy that BITTENBENDER's co-conspirators would use AVCARD's bid information to bid against AVCARD at those locations where they were directly competing with AVCARD, in such a way as to foreclose AVCARD from competing freely for these DESC contracts and as to prevent DESC from achieving its requirement of a competitive bidding process.
- D. It was part of the conspiracy that BITTENBENDER and his co-conspirators knew and intended that misappropriating AVCARD's trade secrets for their own benefit would substantially injure AVCARD economically.
- E. It was part of the conspiracy that BITTENBENDER's co-conspirators would pay BITTENBENDER a flat fee, plus a commission of 10% of the profits at every into-plane location where their bid successfully won the DESC contract. BITTENBENDER was to be paid a percentage of the fuel sales for PC&S fuel

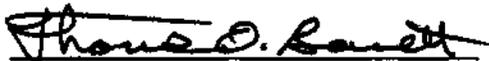
supply contracts won by Competitor 1 or Competitor 2.

F. It was part of the conspiracy that BITTENBENDER and his co-conspirators would conceal and misrepresent the nature and extent of their relationship from any other person, including AVCARD and DESC.

OVERT ACTS

25. The United States re-alleges the allegations set forth in paragraph 11, subparagraphs A through S, of this Information and incorporates by reference these paragraphs as if they were fully set forth herein.

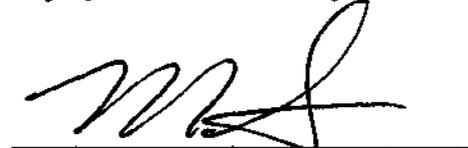
All in violation of Title 18, United States Code, Section 1832(a)(5).


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